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09/696,510	10/25/2000	James N. Elesh	1300-155	2578

7590

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EXAMINER

ARNOLD III, TROY G

ART UNIT

PAPER NUMBER

3728

DATE MAILED: 01/17/2002

Please find below and/or attached an Office communication concerning this application or proceeding.

# Office Action Summary

Application No.

09/696,510

Applicant(s)

Elesh et al

Examiner

Troy Arnold

Art Unit

3728



— The MAILING DATE of this communication appears on the cover sheet with the correspondence address —

## Period for Reply

A SHORTENED STATUTORY PERIOD FOR REPLY IS SET TO EXPIRE 3 MONTH(S) FROM THE MAILING DATE OF THIS COMMUNICATION.

- Extensions of time may be available under the provisions of 37 CFR 1.136 (a). In no event, however, may a reply be timely filed after SIX (6) MONTHS from the mailing date of this communication.
- If the period for reply specified above is less than thirty (30) days, a reply within the statutory minimum of thirty (30) days will be considered timely.
- If NO period for reply is specified above, the maximum statutory period will apply and will expire SIX (6) MONTHS from the mailing date of this communication.
- Failure to reply within the set or extended period for reply will, by statute, cause the application to become ABANDONED (35 U.S.C. § 133).
- Any reply received by the Office later than three months after the mailing date of this communication, even if timely filed, may reduce any earned patent term adjustment. See 37 CFR 1.704(b).

## Status

1) ☒ Responsive to communication(s) filed on Dec 5, 2001

2a) ☐ This action is FINAL. 2b) ☒ This action is non-final.

3) ☐ Since this application is in condition for allowance except for formal matters, prosecution as to the merits is closed in accordance with the practice under *Ex parte Quayle*, 35 C.D. 11; 453 O.G. 213.

## Disposition of Claims

4) ☒ Claim(s) 1-15 is/are pending in the application

4a) Of the above, claim(s) 1-13 is/are withdrawn from consideration

5) ☐ Claim(s) \_\_\_\_\_ is/are allowed.

6) ☒ Claim(s) 14 and 15 is/are rejected.

7) ☐ Claim(s) \_\_\_\_\_ is/are objected to.

8) ☐ Claims \_\_\_\_\_ are subject to restriction and/or election requirements.

## Application Papers

9) ☐ The specification is objected to by the Examiner.

10) ☐ The drawing(s) filed on \_\_\_\_\_ is/are objected to by the Examiner.

11) ☐ The proposed drawing correction filed on \_\_\_\_\_ is: a) ☐ approved b) ☐ disapproved.

12) ☐ The oath or declaration is objected to by the Examiner.

## Priority under 35 U.S.C. § 119

13) ☐ Acknowledgement is made of a claim for foreign priority under 35 U.S.C. § 119(a)-(d).

a) ☐ All b) ☐ Some\* c) ☐ None of:

1. ☐ Certified copies of the priority documents have been received.

2. ☐ Certified copies of the priority documents have been received in Application No. \_\_\_\_\_.

3. ☐ Copies of the certified copies of the priority documents have been received in this National Stage application from the International Bureau (PCT Rule 17.2(a)).

\*See the attached detailed Office action for a list of the certified copies not received.

14) ☐ Acknowledgement is made of a claim for domestic priority under 35 U.S.C. § 119(e).

## Attachment(s)

15) ☒ Notice of References Cited (PTO-892)

18) ☐ Interview Summary (PTO-413) Paper No(s). \_\_\_\_\_

16) ☐ Notice of Draftsperson's Patent Drawing Review (PTO-948)

19) ☐ Notice of Informal Patent Application (PTO-152)

17) ☐ Information Disclosure Statement(s) (PTO-1449) Paper No(s). \_\_\_\_\_

20) ☐ Other: \_\_\_\_\_

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## **DETAILED ACTION**

### ***Election/Restriction***

Applicant's election with traverse of Group III, claims 14 and 15 in Paper No. 3 is acknowledged. The traversal is on the ground(s) that all of the groups could be searched and examined simultaneously. This is not found persuasive because whether or not the groups could or could not be searched together is not germane, and not part of the restriction process outlined in the MPEP. The distinct inventions would cause a burdensome search, as they are all classified in different classes. Claims 1-13 are withdrawn from consideration .

The requirement is still deemed proper and is therefore made FINAL.

### ***Claim Rejections - 35 USC § 112***

The following is a quotation of the second paragraph of 35 U.S.C. 112:

The specification shall conclude with one or more claims particularly pointing out and distinctly claiming the subject matter which the applicant regards as his invention.

Claims 14 and 15 are rejected under 35 U.S.C. 112, second paragraph, as being indefinite for failing to particularly point out and distinctly claim the subject matter which applicant regards as the invention. It is unclear exactly what applicant considers his invention. Are the items in the preamble of claim 14 - "for shipping a pet bed in a delivery carton" - positively recited and therefore claimed?

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The phrase "means for compacting a portion of said pet bed to fit into said large compartment" is functional and indefinite, as it modifies only the preamble phrase of claim 14. This applies similarly to the phrase "with said portion of said pet bed enclosed therein." The phrase "whereby said carton may be shipped....compartment empty" is functional and indefinite. What structure is being distinctly claimed? Claim 15 has the same problem. All of the limitations in claim 15 modify the preamble of claim 14 or other indefinite phrases, making claim 15 functional, vague and indefinite in its entirety.

***Claim Rejections - 35 USC § 102***

The following is a quotation of the appropriate paragraphs of 35 U.S.C. 102 that form the basis for the rejections under this section made in this Office action:

A person shall be entitled to a patent unless --

(b) the invention was patented or described in a printed publication in this or a foreign country or in public use or on sale in this country, more than one year prior to the date of application for patent in the United States.

Claim 14, inasmuch as it is understood, is rejected under 35 U.S.C. 102(b) as anticipated by or, in the alternative, under 35 U.S.C. 103(a) as obvious over Cai. Cai teaches a system comprising a carton 10 having a large compartment 32 with means for sealing 58, and small compartment 34 with means for temporarily closing 26,52.

Claim 14, inasmuch as it is understood, is rejected under 35 U.S.C. 102(b) as anticipated by or, in the alternative, under 35 U.S.C. 103(a) as obvious over Hooker. Hooker teaches a

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system comprising a carton having a large compartment with means for sealing, and small compartment with means for temporarily closing, as seen in Figs 1-6.

***Claim Rejections - 35 USC § 103***

The following is a quotation of 35 U.S.C. 103(a) which forms the basis for all obviousness rejections set forth in this Office action:

(a) A patent may not be obtained though the invention is not identically disclosed or described as set forth in section 102 of this title, if the differences between the subject matter sought to be patented and the prior art are such that the subject matter as a whole would have been obvious at the time the invention was made to a person having ordinary skill in the art to which said subject matter pertains. Patentability shall not be negated by the manner in which the invention was made.

Claim 15, inasmuch as it is understood, is rejected under 35 U.S.C. 103(a) as being unpatentable over either Cai or Hooker, and further in view of Turner et al. Cai and Hooker teach all the limitations of claim 15, inasmuch as it is understood, except a vacuum pump for evacuating a package. Turner teaches the use of a vacuum pump for the purpose of evacuating a package. It would have been obvious to one of ordinary skill in the art at the time the invention was made to incorporate the vacuum pump of Turner into the package system of either Cai or Hooker for the purpose of removing air from a packaging system.

Any specific inquiries concerning this communication or earlier communications from the Examiner may be directed to Troy Arnold at (703) 305-0621. The Examiner can normally be reached Monday through Friday 9:30am - 6pm EST. Official responses may also be faxed directly to Tech Center 3700 at (703) 872-9302, and after final responses to (703) 872-9303.

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Questions of a general nature may be directed to the Group Receptionist at (703) 308-1148. Tech Center 3700 Customer Service may also be reached at (703) 306-5648.

Troy Arnold

January 11, 2002



M.D. Patterson  
Primary Examiner